

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JOHN WINTERS, JR., )  
Plaintiff, )  
v. ) Civ. No. 06-36 Erie  
CITY OF ERIE, PENELEC GPU, )  
Defendants. )

**ORDER**

This Complaint in the instant action was filed pro se on April 14, 2006, by Plaintiff John Winters, Jr, a resident of Pennsylvania. The Complaint alleges that Mr. Winters suffered injuries as a result of falling into a hole in the sidewalk on the Bayfront Parkway in the City of Erie, Pennsylvania, on April 25, 2004. Mr. Winters alleges that the sidewalk is owned by Defendant City of Erie, a Pennsylvania municipal corporation and maintained by Defendant Penelec GPU, a corporation with its principal place of business in Erie, Pennsylvania, and that these Defendants are liable for his injuries. The Defendants have filed motions to dismiss pursuant to Fed.R.Civ.P. 12(b)(1) arguing that we lack subject matter jurisdiction.

Original jurisdiction in this Court requires not only that the parties are diverse, but also that the amount in controversy exceeds \$ 75,000. On his Cover Sheet, Mr. Winters states that he demands \$50,000, but he does not allege a basis for jurisdiction in this court. There is no diversity of parties in this action as the Complaint states a personal injury claim filed by a resident of Pennsylvania against two Pennsylvania Defendants. Therefore, this Court lacks subject matter jurisdiction over this action.

This action follows Plaintiff's prior lawsuit filed in this Court on January 25, 2006, which was dismissed for failure to advise Defendants of the legal grounds for his claim for relief inasmuch as the Complaint did not mention the injury. Plaintiff apparently had counsel

representing him until August 3, 2005, but that relationship ended for unknown reasons. (Ex. 1, at 1, attached to Complaint.) Accordingly, we will dismiss this action without prejudice.

The following Order is hereby entered.

AND NOW, to-wit, this 19<sup>th</sup> day of June, 2006, it is hereby ORDERED, ADJUDGED, and DECREED that the Defendants' Motions to Dismiss (Docs. 12 & 15) be and hereby are GRANTED because this Court lacks subject matter jurisdiction.

IT IS FURTHER ORDERED that the Complaint is dismissed without prejudice.

Maurice B. Cohill, Jr.  
Maurice B. Cohill, Jr.  
Senior United States District Judge

cc: counsel of record